



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 18-02325
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On February 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 26, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on May 6, 2019. The Government's evidence is identified as Items 1 through 6. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant provided a statement to the FORM that is marked as Applicant's Exhibit (AE) A. There were no objections to any of the Government or Applicant's evidence and Items 1 through 6 and AE A were admitted into evidence. The case was assigned to me on June 24, 2019.

Findings of Fact

Applicant denied the sole SOR allegation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 64 years old. He earned a bachelor's degree in 1977 and two master's degrees in 1982 and 1986. He married in 1998 and has two children ages 19 and 17 years old. Applicant has been employed since August 2016 by a federal contractor. (Item 2)

Applicant completed a security clearance application (SCA) in January 2017. In it he disclosed the delinquent credit card debt alleged in the SOR (¶ 1.a.-\$26,019). He stated the reason for his failure to pay the debt was because he was out of work. In response to the inquiry to provide the current status of the financial issue, he stated: "I am planning to file for bankruptcy when the time is right." (Item 1)

In November 2017, Applicant was interviewed by a government investigator. He told the investigator that his finances were "okay" and he could pay his current bills on time, but could not afford to pay down his past debt. He acknowledged he owed approximately \$26,000 for a credit card bill that was in collection status. He explained that in 2008, he was laid off and used the credit card to make up for his lack of pay and to purchase general household items. He stopped making payments on the bill in February 2014. He told the investigator that he could not afford to pay this debt and did not anticipate being able to pay the debt down or being able to pay it anytime soon. He further stated he intended to file bankruptcy no later than the summer of 2018 unless his finances improved.

The SOR alleges one credit card debt with an outstanding balance of \$26,019 that was placed in collection status in March 2014. A credit report from April 2017 lists the debt as in collection. Credit reports from September 2018 and April 2019 list the debt as charged off. (Items 1, 4, 5, 6)

In Appellant's answer to the SOR, he denied the allegation and stated the following: "While I had an outstanding balance with [creditor] for the amount noted, at the time when I first applied for a clearance, I am now making payments on the balance and intend to pay this off." He did not provide documentary proof. (Item 1)

Applicant explained in his FORM response that he began experiencing financial problems in 2007 when he was laid off after twenty years of employment with a large defense contractor. He was unemployed as follows: July 2007 to May 2008; October 2008

to December 2010; August 2012 to August 2013; and January 2014 to October 2014. During the interim periods Applicant was underemployed in part-time work or worked for employers as he was needed. At different times his only source of income was unemployment insurance. In 2010, he chose to move his family to a more affordable location. He placed their townhouse for sale, but it did not sell until September 2012. He was forced to continue to pay the mortgage and rent on the apartment where his family had moved. (AE A)

Applicant also attributed his financial problems to medical expenses in December 2016, November 2017, and February 2018 for his wife that were not covered by insurance. He said that he is making payments on these debts. He also had medical bills not covered by insurance that he had to pay. He did not provide what he paid, when he paid them, and any remaining balance. (AE A)

Applicant stated in his FORM responses that he contacted the credit card company in early 2019. He said he began repaying the debt in March 2019 and reduced the amount owed to \$24,770. Applicant failed to provide documentary proof that he has a payment plan with the creditor or proof that he has reduced his debt. (AE A)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a large delinquent credit card debt that was in collection and charged off in 2014. He indicated when completing his SCA and during his background interview that he did not intend to pay it because he did not have the resources and he intended to file bankruptcy. He had long periods of unemployment and underemployment and medical debts and was unable to pay the debt. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant failed to provide evidence that he is paying the large credit card debt alleged. He repeatedly stated he did not intend to pay it because he did not have the resources, but then said he is paying it, but provided no proof. His delinquent debt is recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to unemployment, underemployment, and medical debts. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant has been employed since August 2016. He indicated he had medical bills not covered by insurance, but failed to provide evidence of a payment plan and payments on the large credit card debt. Based on his representations, it is unclear when he began to take action to resolve the debt as he had previously stated he that he likely was going to file bankruptcy. It is unknown if he has negotiated a payment plan with the creditor, the term of the plan, and what payments he has made. AG ¶ 20(b) has partial application.

There is no evidence Applicant has received financial counseling. Applicant failed to provide substantiating evidence that he is making good-faith efforts to pay the debt alleged in the SOR. AG ¶¶ 20(c) and 20(d) do not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 64 years old and is highly educated. He has had long periods of unemployment and underemployment that impacted his finances. It is unknown if his wife was employed during this time. His other financial obligations are unknown. The large credit card debt alleged has been delinquent since 2014. Applicant stated that sometime in 2019 he began to address the debt, but failed to corroborate his actions. He initially stated in reference to this debt that he intended to file bankruptcy. There is no evidence that Applicant has negotiated a settlement or has established a track record of consistent payments towards this significant debt. Applicant has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge